

Senator Michael B. Enzi  
Testimony before  
the Senate Committee on Commerce,  
Science and Transportation  
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Thank you, Mr. Chairman and Ranking Member, for allowing me the opportunity to testify before this panel regarding S.1712, the Export Administration Act of 1999.

Let me begin by emphasizing the need to reauthorize the expired Export Administration Act (EAA) of 1979. The EAA provides authority to control exports for dual-use items, or items which are used for commercial applications but could also be used for military purposes. For six years the Congress has failed to update and reauthorize this important Act. Instead, our export control laws have been implemented by Executive Orders under the authority of the International Emergency Economic Powers Act (IEEPA).

This inaction by Congress is inexcusable and irresponsible. It has created an increasingly dangerous situation. IEEPA was not intended to allow the President to maintain export controls indefinitely without congressional authorization. S.1712 would correct this situation and place our export control system on firm statutory ground. It strengthens national security by granting the Department of Defense more involvement than was given to them in the expired Act.

There are other reasons it is vital to reauthorize the EAA, however, I will give only brief mention to them. First, the U.S. has difficulty convincing other countries, even our strongest allies, of the importance of multilateral controls when the Congress has not passed a law authorizing the use of export controls. Second, the Department of Commerce provides assistance to countries, such as the former Soviet republics, so these countries might implement an export control system to stem the proliferation of certain technologies. The lack of statutory export control authority in the U.S. sends the

signal to these countries that we are not serious about controlling dual-use items. And finally, S.1712 would place specific criteria on the exercise of export control authority, and require transparency and accountability from the executive branch. Without Congressional action, the executive branch has the ability to use any criteria for control, decontrol, decision-making, risk assessment -- you name it - for the entire export control regime. Bottom line: the export control system will change as Administrations change, unless we reauthorize the EAA.

In crafting a new EAA, we examined the problems identified with the current export control framework and the recommendations of the Defense Science Board, the Cox commission report, and the commission to study the Proliferation of Weapons of Mass Destruction. We also studied the EAA of 1979 and used it as our baseline. Keep in mind that this Act helped bring us through a particularly dangerous period of the Cold War.

S.1712, as unanimously reported from the Senate Banking Committee, is good for national security. As I mentioned earlier, it restores the expired authority to control the export of commercial items. The bill contains several provisions that allow for the protection of sensitive technologies, regardless of any other provision in the bill. I refer to these as "carve-outs". These checks and balances are placed throughout the bill.

Section 201(c) of the bill allows controls to be imposed on any item that could contribute to the proliferation of weapons of mass destruction or the means to deliver them, based on the end use or end user.

Section 309 of the bill also allows the control of any item in order to comply with international obligations. I have heard several individuals, including one who testified at the most recent Armed Services Committee hearing, claim S.1712 would decontrol items that we would not want decontrolled. One assertion by this witness was that this bill would decontrol triggers contained in kidney stone

machines that can also be used for nuclear weapon triggers. However, he even admitted that this item is controlled by the Nuclear Suppliers Group! Therefore, under Section 309 of the bill, these machines would still be controlled to certain end users and for certain uses because of its control under an international obligation.

S.1712 strengthens the role of the Department of Defense. The bill requires concurrence in the making of the national security control list, and we have agreed to explicitly state that concurrence would also be required when taking an item off the list. Additionally, at the first level of interagency dispute resolution, a representative from any department or agency present can escalate any decision made by the Chair. Currently, only the head of that agency is able to request escalation of a decision. In addition, the bill requires each member to clearly state the reasons for his or her position and the reasons are entered into the minutes. The minutes will give the Congress much better oversight of the process, including who attended the meetings and the reasoning for the decisions. This greatly increases transparency and accountability.

The bill toughens criminal and civil penalties. It increases penalties significantly from the levels of IEEPA, making exporters think twice before exporting without the proper authorization. An exporter will no longer simply calculate the fines for non-compliance with the law as a cost of doing business. Under S.1712, the fine levels are set high enough to deter any exporter from shipping without proper license.

The bill is also good for trade. It streamlines the controls and makes the system more transparent for exporters and the Congress. It provides guidance to the executive branch to develop a stronger multilateral export control regime. The bill also creates a framework compatible with the high-tech economy. It attempts to remove ineffective controls by decontrolling items that are readily available from foreign sources or are available at a mass-market (commodity) status. Government regulation has always lagged behind industry. This is even more the case today as the pace of technology is greatly

outstripping the ability of any government to effectively control mass-market items. The Final Report of the 1999 Defense Science Board Task Force on Globalization and Security said,

"Protection of capabilities and technologies readily available on the world market is, at best, unhelpful to the maintenance of military dominance and, at worst, counterproductive... DOD must put up higher walls around a much smaller group of capabilities and technologies."

I urge my colleagues to work with Chairman Gramm, Ranking Member Sarbanes, Senator Johnson and me to reauthorize the EAA this year. We all deeply care about the national security of the United States. The Banking Committee regularly addresses issues relevant to national security, especially the economic security of the nation. We do not want a re-control of many items, as some members would strongly support. Several of the suggestions by critics of the bill would effectively do this.

We have been reasonable and have listened to everyone's concerns. We have tried to address every concern without upsetting the balance in the bill. We must look at the big picture. The country will be better served if a balanced EAA is passed. Critics are speeding down a one-way street that dead ends in the status quo. The status quo is not where we want to end up.

It would not be good public policy to "fix" the system in a piece-meal or knee-jerk manner as Congress has already attempted to do in several areas of export control policy. The Congress must resist the feel good temptation to pass a bill that only increases penalties. It will not fix the underlying problems with the current system that I identified at the beginning of my testimony.

Reasonable people may disagree even given the same facts. But reasonable people should be able to agree it is good policy to reauthorize the EAA. Leaving a broken system in place for one day longer leaves our country open to serious national security risks. S.1712 is good for the national security of this great nation and it is not in the best interests of the United States to delay reauthorization another

year.